

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EDWARD TAVARES, JR.,  
PETITIONER ,

v.

STEVEN O'BRIEN,  
RESPONDENT.

CIVIL ACTION  
NO. 04-40059-FDS

**RESPONDENT'S MOTION FOR ORDER TO PETITIONER  
TO AMEND PETITION TO INCLUDE ONLY EXHAUSTED CLAIMS**

The respondent, Steven O'Brien, hereby moves this Court to order Edward Tavares ("petitioner") to amend his habeas corpus petition to include only those claims which are exhausted. As explained more fully in the accompanying memorandum of law, because the district courts must dismissed mixed habeas petitions, *Pliler v. Ford*, 542 U.S. \_\_\_, 124 S. Ct. 2441, 2444 (2004), and because the statute of limitations has already run, 28 U.S.C. § 2244(d)(1), if the petitioner wishes to proceed with a habeas corpus petition, he must amend his petition and proceed with those exhausted claims which he filed timely. Should the petitioner refuse to amend his petition, the respondent respectfully asks this Court to dismiss the entire petition.

Respectfully submitted,

THOMAS F. REILLY  
Attorney General

/s/ Daniel I. Smulow  
Daniel I. Smulow, BBO # 641668  
Assistant Attorney General  
Criminal Bureau  
One Ashburton Place

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Boston, Massachusetts 02108  
(617) 727-2200, ext. 2949

Date: November 10, 2004

**Certificate of Compliance with Local Rule 7.1(A)(2)**

I, Daniel I. Smulow, hereby certify that I am unable to speak with the petitioner, Edward Tavares, because he is presently incarcerated.

/s/ Daniel I. Smulow

**Certificate of Service**

I hereby certify that a true copy of the above document was served on Edward Tavares, *pro se*, N.C.C.I. - Gardner, P.O. Box 466, 500 Colony Road, Gardner, MA 01440, by first class mail, postage prepaid, on November 10, 2004.

/s/ Daniel I. Smulow